

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK



TINDALL CORPORATION,

Plaintiff,

v.

22-CV-745 (JLS) (MJR)

BERKLEY ASSURANCE COMPANY,

Defendant.

DECISION AND ORDER

Plaintiff Tindall Corporation commenced this action against Defendant Berkley Assurance Company, alleging a breach of contract claim involving an insurance policy. *See* Dkt. 1. Defendant answered. Dkt. 10.

On March 26, 2024, Plaintiff and Defendant each moved for summary judgment. *See* Dkt. 31, 32. The parties opposed each other's motions (Dkt. 33, 34), and they both filed reply briefs. Dkt. 35, 36. Following oral argument, Judge Roemer¹ requested further briefing (Dkt. 39), which the parties submitted. *See* Dkt. 41–44.

On February 21, 2025, Judge Roemer issued a Report and Recommendation (“R&R”), recommending that this Court grant Defendant’s motion for summary

¹ This Court referred the case to United States Magistrate Judge Michael J. Roemer for all proceedings under 28 U.S.C. §§ 636(b)(1)(A), (B), and (C). Dkt. 12.

judgment and deny Plaintiff's motion for summary judgment. *See* Dkt. 45, at 40. Plaintiff and Defendant filed objections. Dkt. 49, 50. The parties then filed responses to each other's objections (Dkt. 54, 55), as well as reply briefs. Dkt. 56, 57.

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a *de novo* review of those portions of a magistrate judge's recommendation to which a party objects. *See* 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(3).


This Court carefully reviewed the R&R, the objections briefing, and relevant record. Based on its *de novo* review, the Court accepts and adopts Judge Roemer's recommendation.²

² Although the R&R uses the term "find[ing]" at pages 34 and 40, there have been no fact findings in this summary judgment posture. The R&R's conclusions, however, are appropriate and adopted here.

For the reasons stated above, and in the R&R, this Court GRANTS Defendant's [32] motion for summary judgment, and DENIES Plaintiff's [31] motion for summary judgment. The Clerk of Court is directed to close the case.

SO ORDERED.

Dated: May 14, 2025
Buffalo, New York

A handwritten signature in blue ink, appearing to read "JLS", is written over a horizontal line.

JOHN L. SINATRA, JR.
UNITED STATES DISTRICT JUDGE